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WORLD LAW BULLETIN

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AFRICA

KENYA – Judicial Corruption

Kenya's new government, installed nine months ago under President Mwai Kibaki, has come under pressure from the public and from politicians to introduce reforms to the judiciary following the revelation of widespread corruption among the judges and magistrates. A committee set up by President Kibaki found credible and substantial evidence of corruption, unethical conduct, and other forms of misbehavior among 5 of Kenya's 9 appeals court judges, 18 of 36 high court judges, and 82 of 254 magistrates.

Offenses detailed by the committee chairman, Justice Aaron Ringera, included accepting bribes in return for partial judgments, manipulating evidence, stealing exhibits, and pursuit of sexual favors. It is stated that the new government has sacked hundreds of officials in an attempt to dismantle the patronage networks blamed for the institutional decay and decline of east Africa's leading economy. (*The Financial Times*, Oct. 2, 2003, at 6.)
(Krishan Nehra, 7-7103)

MOZAMBIQUE – Controversy Over Establishment of Labor Courts

The largest trade union federation in Mozambique, known by the initials OTM, has demanded the creation of labor courts, which have never been set up even though they are called for in the current Constitution and a 1992 Law. OTM Secretary General Joaquim Fanheiro stated that although authorities have publicly committed themselves to establishing courts in three cities (Maputo, Beira, and Nampula), no concrete action has been taken. The government claims that no buildings are available in which to locate the courts. Because of the lack of labor courts, more than 7,500 labor-related cases have accumulated in ordinary law courts and are awaiting trial.

Fanheiro recently recommended setting up labor courts in temporary locations and providing training for specialized magistrates. He added that trade unions are seeking partners to help overhaul the system and to solve labor conflicts through dialog and arbitration. He also affirmed that work is underway to review the country's labor laws in order to accommodate a system of arbitration. ("Trade Unions Demand Labour Tribunals," Sept. 23, 2003, *allAfrica.com* via <http://allafrica.com/stories/200309230548.html>.)
(Sandra Sawicki, 7-9819)

AMERICAS

ECUADOR – Case Against Chevron Texaco Begins

On October 21, 2003, a case brought by 30,000 indigenous and rural people against the United States oil company Chevron Texaco opened in a court house in Lago Agrio, Ecuador, located in the Amazon jungle east of Quito, the capital city. The plaintiffs are charging that a subsidiary of the oil company contaminated the soil and rivers of the area between 1972 and 1992. They also accuse the company of dumping contaminated wastes into collective wells. The representatives of Chevron Texaco maintain that their company complied with all Ecuadorian laws related to the protection of natural resources, that environmental damage is minimal, and that water used in production was treated before being released outside. Experts believe that a verdict in the case could take months.

Processing the case has been paralyzed for nearly a decade because of disputes over jurisdiction. The case was brought before a court in New York on August 13, 1993. Nine years later, a U.S. Court of Appeals determined that the case should be tried in Ecuador. A representative of the plaintiffs said that they are requesting indemnification, an improvement in the quality of life, and a just compensation for the victims. (“Ecuador: Case Against Texaco Begins,” *BBC Mundo.com*, Oct. 21, 2003, via http://news.bbc.co.uk/hi/spanish/latin_america/newsid_3212000/3212706.stm; “Case Against Chevron Texaco Begins for Contamination in Ecuador,” *CNNenEspanol*, Oct. 22, 2003, <http://www.cnnenespanol.com/2003/americas/10/21/ambiente.ecuador.chevron.reut/index.html>.) (Sandra Sawicki, 7-9819)

MEXICO – Maquiladora [In-Bond] Export Industry Accord

On August 8, 2003, the Secretariat of Economy published the “Accord That Determines Activities That Can Be Carried Out by Services Maquiladora Companies.” Under this Accord, the Secretariat of Economy may approve the operations of a services maquiladora company to perform only the following activities:

1. Supply, warehousing, or distribution of raw materials, parts and components;
2. Packaging, re-packaging, bottling, or labeling of goods;
3. Classification, inspection, testing or verification of goods;
4. Cutting, adjusting, sanding down, gluing, polishing, painting or waxing of parts;
5. Repairation or maintenance of goods;
6. Laundry and ironing of garments;
7. Embroidery or printing of garments;
8. Armoring, modification, or adaptation of motor vehicles;
9. Designing or engineering of products, including software, and
10. Recycling or storage of waste.

The Secretariat may grant authorization to industrial maquiladoras to engage in the above-listed activities if they were already performing them as a complement to their industrial activity, but they must renew their authorization within 90 days from the date of enforcement of the Accord. The Secretariat may authorize a services maquiladora company to perform services other than those listed above if those services are applied to national or nationalized goods that are subsequently exported. (*Diario Oficial de la Federación*, Aug. 8, 2003; *see also* 9 W.L.B. 2003.) (Norma C. Gutiérrez, 7-4314)

MEXICO – Property Ownership Leads to Conflicts

A recent press report revealed that thousands of land ownership conflicts are occurring throughout Mexico as a result of the contradictory property ownership laws and poor or nonexistent record keeping. The disputes are generally between groups of poor peasants or Indian communities, but occasionally United States investors find themselves embroiled as well. Three years ago, 300 residents, mostly from the United States, were evicted from homes they thought they owned in Ensenada, located in Baja California State. They lost approximately \$50 million in property. According to a member of the Agrarian Reform Commission in the Mexican Congress, only 18 percent of farm properties in Mexico have been definitively mapped.

Another source of conflict is the 27,000 parcels of land (*ejidos*) that have been given to peasants and Indian communities by Mexican presidents from 1917 to 1992. Created by the 1917 Constitution to redistribute land to the poor, *ejidos* now constitute more than half of the country’s farmland. According to the charter, the recipients could not sell the land, only use it, because technically it was still owned by

the State. Currently there are disputes over possession of many of the *ejidos* because Mexican presidents took them out of communal properties created before the current system and conferred by the Spanish monarchs on Indians. Many of the original communal landowners are now attempting to reclaim their land.

Another factor in the land ownership controversy is presidential expropriation of communal land for development. In 1997, President Ernesto Zedillo expropriated 7,000 acres in Sonora State that belonged to the Yaqui community for this purpose. The situation has been exacerbated by a Mexican economic crisis that hindered the growth of industrial jobs that would attract peasant farmers and the creation of investments in larger and more efficient farms. (“Mexico’s Land of Discord,” *Los Angeles Times*, Oct. 13, 2003, via <http://www.latimes.com>.) (Sandra Sawicki, 7-9819)

ASIA

BANGLADESH – Corruption of the Judiciary

The President of the Supreme Court Bar Association, Barrister Rokanuddin Mahmud, who brought an allegation of corruption against an additional judge of the High Court Division stated, “I have gone public with the truth. If I were in his position, I would have resigned immediately.” Senior lawyers yesterday pegged the allegation of corruption as “the fallout of politicization of judges’ recruitment.” A former government attorney anonymously stated that “As the recruitment process is opaque, the government is appointing inefficient people, loyal to the ruling parties, as judges.”

The charge against the High Court Division judge has shocked the nation. (*The Daily Star*, Oct. 3, 2003, at <http://www.thedailystar.net/2003/10/03/d3100301033.htm>.) Following the October 3 allegation, on October 20, 2003, the Chief Justice of Bangladesh sought presidential approval for an inquiry by the Supreme Judicial Council into the allegations. (*The Dawn*, Oct. 21, 2003, <http://www.dawn.com/2003/10/21/int7.htm>.) (Krishan Nehra, 7-7103)

CHINA – Private Schools Gain Equality

A new law that gives private schools status equal to that of State-operated schools has come into force. Enacted in December 2002 and effective September 1, 2003, the Law on Promoting Private Schools permits private investors to make reasonable profits from educational operations.

The Law gives non-public schools the rights to any preferential treatment given to their public counterparts and regulates the activities of the government and investors in those schools, to safeguard the interests of the schools, the students, and the staff. This has been called a sign of the great changes that have taken place in the educational system of China in the last few years. (*Economic Daily*, quoted in “Law Gives Private, State-Owned Schools Equal Status,” Xinhua, Sept. 2, 2003, via FBIS; “China’s Law on Private School Promotion Changes,” *Asia Pulse*, Dec. 20, 2002, via LEXIS/NEXIS, Asiapc library.) (Constance A. Johnson, 7-9829)

CHINA – Control of Human Genetic Resources

It has been reported in the Chinese press that the Ministry of Health and the State Administration of Quality Supervision, Inspection and Quarantine recently jointly issued a notice requiring organizations and individuals to apply to the authorities for a permit to carry, mail, or transport human genetic materials

out of China. Persons who take or send such materials out of the country without permission will face legal penalties. The notice specifically tightens control over the inflow and outflow of other special materials used for medical purposes, including pathogenic animalcule and scientific samples and human materials. For any such products to be taken out of the country, after obtaining the consent of provincial-level health departments in charge of science and technology through an examination and verification process, one must report to the China Human Genetic Resources Management Office for its approval. That office is an administrative organ formed jointly by the Ministry of Health and the Ministry of Science and Technology (“China Tightens Control of Human Genetic Resources Outflow,” *Xinhua*, Oct. 9, 2003, via FBIS.)
(Wendy Zeldin, 7-9832)

HONG KONG – Copyright Law Amended

As a part of a government policy of facilitating the free flow of genuine goods, copyright law is being liberalized in Hong Kong. The Copyright (Amendment) Ordinance 2003 will become effective as of November 28, 2003. It will remove both civil and criminal liabilities related to parallel importation and sale of articles with embedded computer programs, except for computer software products that are designed primarily for music or video recording, movies, television dramas, e-books, or a combination of them. Under the law before this revision, it had been a criminal offense to import or sell parallel-imported copyrighted works, including computer software products that have been published for less than 18 months in Hong Kong or elsewhere. The only exception was for private and domestic use. However, parallel importation of goods protected by trademark alone, not copyright, has been permitted all along. (“Hong Kong’s Amended Copyright Law To Take Effect in November,” *Xinhua*, Oct. 3, 2003, via FBIS; http://www.wikipedia.org/wiki/Parallel_importation.)
(Constance A. Johnson, 7-9829)

INDIA – Chief Minister Indicted

In a significant political development ahead of the November 2003 elections in the State of Chattisgarh in India, the Central Bureau of Investigation (CBI) filed a charge sheet against the state’s Chief Minister, Ajit Jogi, accusing him of “deliberately” using forged documents to claim that the Intelligence Bureau had launched a special operation (code-named Black Sea) to target him and other opposition Congress Party members in the run-up to elections that will be held on December 1, 2003. The Chief Minister, the CBI charges, even sent these documents to the Prime Minister while being aware that they were forged. (*The Hindu*, Oct. 7, 2003, at <http://www.hinduonnet.com/thehindu/holnus/01072201.htm>.)
(Krishan Nehra, 7-7103)

INDIA – Tax Tribunal

The Government of India, at a Cabinet meeting held on October 3, 2003, cleared a proposal to set up a National Tax Tribunal to reduce the burden of pending cases in High Courts and to ensure uniformity in administration of tax laws. The long awaited measure envisages setting up 25 benches under the Tribunal. The Tribunal itself may consist of a Chairperson and a number of judicial and technical members. The Chairperson is to be a retired judge of the Supreme Court or a retired chief justice of a High Court. (*The Hindu*, Oct. 3, 2003, at <http://www.hinduonnet.com/>.)
(Krishan Nehra, 7-7103)

JAPAN – PC Recycling Required

Under the Law Concerning Promotion of Effective Use of Resources (Law No. 48 of 1991), businesses using personal computers (PCs) have been obliged since April 2001 to put their used PCs into recycling. As of October 2003, this obligation was expanded to include individuals who use computers at home, under an amendment of the Ministry of Economy, Trade, and Industry (METI) and Environment Ministry Ordinance No. 1 of 2001. In the case of PCs sold before October 2003, consumers must pay separately the cost of recycling, e.g., 3000 *yen* (US\$25) for a PC notebook. For PCs sold on or after October 1, 2003, the recycling fees are added to the sales price. These newer PCs bear the sticker “PC recycle mark.” (Ministry of Economy, Trade, and Industry website (in Japanese), http://www.meti.go.jp/policy/closed_loop/laws/PC/PCrecycle.html.) (Sayuri Umeda 7-0075)

PAKISTAN – Legal Framework Order

The Legal Framework Order, 2002, by which President Perez Musharraf amended several provisions of the Constitution, continues to block parliamentary activity as the Government of Pakistan has refused to bring in changes demanded by the opposition parties. Led by the Supreme Court Bar President, Hamid Khan, and the Pakistan Bar Council Vice-Chairman, Qazi Anwar, lawyers also joined in castigating the Supreme Court in its approval of the President’s power to amend the Constitution.

At their meeting near the Parliament house on October 14, 2003, the lawyers stated that the Constitution contained no power on the basis of which the Supreme Court may vest the military ruler with legislative power for amending the Constitution. In denouncing the role of the Supreme Court, they asked for a trial of the judges under article 6 for cooperating with the military ruler in subverting the Constitution. (*The Dawn*, Oct. 15, 2003, at <http://www.dawn.com/2003/10/15/top3.htm>.) (Krishan Nehra, 7-7103)

PAKISTAN – Money Laundering and Terrorism

Pakistan’s Government is expected to decide on October 15, 2003, on its eight-point agenda that includes promulgation of an anti-money laundering law to control transfer of money through illegal channels, particularly terrorist financing. The money laundering law, drafted in consultation with the United States, awaits approval and promulgation.

The law and order situation is another key issue on the agenda, following the assassination of the Chief of Millat-i-Islmiya of Pakistan, Maulana Azam Tariq, who was also a Member of the National Assembly. Other measures engaging the attention of the Cabinet for appropriate legislation are the Fiscal Responsibility and Debt Limitation Law, the Protected Areas Management Project (with reference to Hingol National Park), and the Civil Servants Amendment Act. (*The Dawn*, Oct, 15, 2003, at <http://www.dawn.com/2003/10/15/top7.htm>.) (Krishan Nehra, 7-7103)

TAIWAN – Election Law Amended

On October 9, 2002, the Legislative Yüan passed several amendments to the Public Officials Election and Recall Law. Most notably, the revised Law allows different political parties to field a joint ticket in presidential elections. It also raises the campaign finance ceiling for various types of public elections; for the 2004 presidential election, a maximum limit of NT\$400 million (about US\$11,747,000) has been set. The new Law provides that parties will face a fine of between NT\$5 million and NT\$50 million if any of their candidates are convicted of vote-buying, use of violence during the campaign,

fixing candidates, organized crime, or other felonies that involve a minimum 10-year prison term. A prison term of between 3 and 10 years and a fine of between NT\$1 million and NT\$10 million may now be imposed for persons convicted of vote buying in elections for speakers and deputy speakers of legislative councils at the central and local level. In addition, the amended Law forbids political parties and individuals from publishing, reporting, or quoting the results of public opinion polls on elections within 10 days of their being held.

A proposal to bar citizens born outside Taiwan from running for president or vice president, dubbed “the Arnold clause” because it resembled the United States Constitutional prohibition on foreign-born citizens like Arnold Schwarzenegger from running for president, was rejected by the legislators. Proponents argued that provisions were needed to protect the rights of Taiwan citizens against the possibility of one of the growing number of immigrants from mainland China becoming president and unifying Taiwan with the communist nation. Opponents, however, held that such a ban would be unfair since, as one argued, “[p]eople who have no way of choosing where their mothers gave birth would be politically isolated for a long time.” (“CNA: Legislature Passes Amendments to Election Law,” Taipei *Central News Agency*, Oct. 9, 2003, via FBIS.)
(Wendy Zeldin, 7-9832)

EUROPE

AUSTRIA – Telecommunications

On August 19, 2003, Austria enacted a comprehensive Telecommunications Act (Telekommunikationsgesetz 2003, *Bundesgesetzblatt* I No. 70/2003). The Act transposes five European Union Directives that were enacted in 2002 into Austrian law (Access Directive, *Official Journal of the European Communities* [OJ] L 108/7; Authorization Directive, OJ L108/ 21; Framework Directive, OJ L 108/33, Universal Service Directive, OJ L 108/51, and Directive on Privacy and Electronic Communications, OJ L 201/37). The new Austrian Act was designed to provide a better regulatory framework for the liberalized telecommunications market. In the cell phone market, competition is enhanced by making cell phones portable. Various abuses are prohibited, among them, e-mail spamming. In addition, restrictions have been placed on phone dial-up services.
(Edith Palmer, 7-9860)

ESTONIA – New Rules for Political Party Financing

Amendments to the Political Party Funds Act were signed into law by the President of Estonia on October 16, 2003. The major novelty is that parties represented in the Parliament are now prohibited from accepting direct donations from private domestic and foreign businesses. Private individuals are still allowed to make donations to the parties. The Act will enter into force gradually and will be completely enforced as of January 1, 2006. As of that date, the ban will extend to parties that have gained more than 5% of the votes in parliamentary or local elections. Only small parties and newly emerging parties will be able to seek donations from businesses, as before. Financing of parliamentary parties will be provided by State budget funds through grants distributed by the Ministry of Internal Affairs. Every year, the Ministry will set the amount of funds. In 2004, this amount will be equal to US\$5 million per party. In addition to donations, non-cash gifts and sponsorships will similarly be limited. For a breach of the new regulations, parties can be fined up to the amount of US\$15 million.

Under the amendment, the ban on political party membership has been lifted for a number of professions, such as judges and police personnel. “Military personnel” remains the only professional category excluded from participation in political parties. Other provisions of the Act regulate relations between employers and employees related to party membership. The Act provides for the punishment of an employer for forcing an employee into a party or into resignation from a party that is unacceptable to the employer. (*BBC Monitoring*, Oct. 17, 2003, published by ISI Emerging Markets at <http://site.securities.com>.) (Peter Roudik, 7-9861)

FRANCE – Bankruptcy Reform

The French government unveiled draft legislation to reform its bankruptcy law. A string of recent corporate collapses and bailouts had shown that the current law drives companies too quickly into liquidation. Ninety percent of French companies filing for bankruptcy end up in liquidation.

The draft legislation strengthens a conciliatory settlement procedure introduced in 1984 but rarely used because it required the consent of all creditors. Providers of new funding during this conciliatory phase will be granted additional legal guarantees and privileges. The bill introduces a procedure somewhat similar “Chapter 11” in the United States, allowing companies to restructure their debts while operating under court protection from creditors. The draft legislation has been published for consultation and the Government hopes that it will be before Parliament at the beginning of 2004. (*Le Monde*, Oct. 13, 2003, via LEXIS, *Le Monde* (Fr); <http://www.justice.gouv.fr/>.) (Nicole Atwill, 7-2832)

FRANCE – Debate on Islamic Head Scarves

In the latest development in the debate over whether wearing Islamic head scarves in public schools represents a violation of the law on separation of religion and State, French President Jacques Chirac did not rule out supporting a specific law banning the practice. He stated that “secularism was not negotiable” and that “we cannot allow people to hide behind a deviant idea of religious liberty in order to defy the laws of the Republic or to threaten fundamental principles of a modern society such as the equality of sex and the dignity of woman.” He added that “secularism constitutes for every citizen a basic protection, a guarantee that not only their own beliefs will be respected but also that the beliefs of others will never be imposed on them.” President Chirac is waiting for the recommendations of a special commission on secularism that he appointed last July before he proceeds further on this issue. (<http://fr.news.yahoo.com/031021/202/3gj53.html>; see also 8 W.L.B. 2003.) (Nicole Atwill, 7-2832)

FRANCE – Draft Bill on Controlling Immigration and the Stay of Aliens in France

The Senate is debating a draft bill aimed at strengthening the fight against illegal immigration, encouraging integration of legal immigrants, and reforming legislation on expulsion and court orders prohibiting entry into France. The draft bill has already been adopted by the National Assembly but the Senate has filed 326 amendments to it. To become final, identical bills generally must be passed by both chambers.

To fight illegal immigration, the draft bill introduces, among others, measures to combat marriages of convenience, forced marriages, and fraudulent acknowledgment of paternity. Organizing or participating in a marriage of convenience, for example, will be punishable by five years of imprisonment and 30,000 *euros* (about US\$35,000). The bill provides for harsher penalties for facilitators and transporters and extends the maximum detention period in holding centers prior to forced removal from

France from 12 days to 32 days. To encourage integration of legal immigrants, the draft bill provides that those who are deemed integrated into French society will be entitled to apply for a ten-year residence permit after an initial minimum five-year period during which they are issued one-year, renewable residence permits. Criteria such as knowledge of the French language, completion of or attendance at a vocational training course, and participation in local life or voluntary work will be used to assess an applicant's level of integration. Lastly, the draft bill reforms the legislation on expulsion and court orders prohibiting access to French territory to prevent situations where such legislation previously led to the dissolution of stable families. (<http://www.senat.fr/leg/pjl02-96.html>)
(Nicole Atwill, 7-2832)

FRANCE – Euthanasia to be Reviewed

The tragic story of 22-year-old Vincent Humbert, quadriplegic, mute, and almost blind after an automobile accident in 2000, has started a new debate on whether to legalize euthanasia in France. At present, only two countries in Western Europe, Belgium and the Netherlands, allow euthanasia, and they do so under very strict conditions. Communicating only through the pressure of his left thumb in response to letters of the alphabet, Vincent Humbert painstakingly, with the help of a journalist, wrote a book entitled *I Ask You for the Right To Die* and asked President Jacques Chirac to grant him that right. The President explained that he could not legally do so. Humbert died two days after his mother injected him with barbiturates during a hospital visit and doctors decided to turn off the life support equipment.

The Minister of Justice asked the prosecutor's office to apply the law to the mother with the "greatest humanity," to take into account her terrible suffering and her son's desires. A poll suggests that 80% of the French people believe the mother was right to carry out her son's request. The National Assembly has set up a parliamentary commission to study the issue. (*Le Monde*, Oct. 2, 3, & 4, 2003, via LEXIS, *Le Monde* (Fr).)
(Nicole Atwill, 7-2832)

GERMANY – Military Service

The German Act on Conscientious Objectors was reformed and re-enacted on August 14, 2003 (Kriegsdienstverweigerungs-Neuregelungsgesetz, *Bundesgesetzblatt* I at 1593). The Act simplifies the proceeding by which men of draft age may apply for conscientious objector status and be allowed to serve in a substitute civilian service. The simplified procedures also apply to male and female military carrier personnel serving on active duty, as well as to reservists of both sexes. Under the new rules, a well-documented written request will usually suffice for the granting of conscientious objector status, and further investigations or hearings will be limited to cases in which abuse is suspected. It appears that the main reason for the reform was cost effectiveness and the streamlining of administrative procedures. (*Frankfurter Allgemeine Zeitung*, July 2, 2003, at 5.)
(Edith Palmer, 7-9860)

LATVIA – Extension of Voting Rights to EU Citizens

In view of Latvia's anticipated accession to the European Union and a positive outcome of the EU referendum, the Latvian Constitution and several laws need to be amended to harmonize Latvian legislation with EU law. A task force organized by order of the Latvian Prime Minister concluded that only the one article of the Constitution that deals with municipal elections has to be amended. Article 101 of the Constitution stated that only Latvian citizens have the right to vote in municipal elections. The European Community founding treaty says, however, that every EU citizen permanently residing in some

other EU Member State but not holding the citizenship of this state may vote and be elected in municipal elections in the given country on the same terms as its citizens. The draft EU Constitutional Treaty contains similar provisions. Relevant amendments drafted by the Justice Ministry were adopted by the Latvian legislature on October 17, 2003. (*BNS [Baltic News Service] Daily News*, Oct. 17, 2003, at: <http://site.securities.com>.)
(Peter Roudik, 7-9861)

LITHUANIA – Complete Ban on Death Penalty

On October 16, 2003, the Parliament of Lithuania ratified Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, on abolition of capital punishment in all cases. By ratifying this Protocol, Lithuania committed itself to prohibiting the death penalty in times of peace and of war. Lithuania overruled the use of capital punishment in peacetime in 1998, after the Constitutional Court found that the punishment contradicts the country's Constitution. In 1999, the Baltic state signed Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms, abolishing the death penalty. Member States to the Protocol have the right to stipulate the death penalty in their laws for actions in war or when there is the threat of war. After ratification of this Protocol, Lithuania has completely outlawed the death penalty on its territory. (*BNS [Baltic News Service] Daily News*, Oct. 16, 2003, at: <http://site.securities.com>.)
(Peter Roudik, 7-9861)

THE NETHERLANDS – Wider Access to Personal Data Proposed

When investigating crimes, the availability of personal data, which is more and more at the disposal of public institutions and private businesses, may be of particular importance, but the powers of law enforcement services and justice authorities in the Netherlands to request such information have heretofore been limited and sometimes unclear. The Council of Ministers, acting on a proposal from the Minister of Justice, has therefore approved a bill that would provide more powers to law enforcement personnel and justice authorities to request personal data from public institutions and companies when required for the investigation of a crime. The bill proposes that a number of general powers be inserted in the Code of Criminal Procedure. Each power is related to a specific category of personal data. The result will be that an investigating officer can request "identifying" information about a certain individual, including not only a person's name, address, place of residence, date of birth or sex, but also his or her client number, policy number, bank account number, or credit transfer account number. Access to "sensitive" information will also be permitted under the bill. This may include information about an individual's religion, race, political affinity, health, or sex life; however, access may only be obtained with prior authorization from the examining magistrate and cannot be requested for petty offenses, but only for crimes that constitute a serious threat to society. The bill will be sent to the Council of State for review. (*NRC-Handelsblad*, Oct. 18, 2003, <http://www.nrc.nl>.)
(Karel Wennink, 7-9864)

THE NETHERLANDS – Anonymous Crime Reporting

An anonymous crime reporting phone line, which has been in operation in five police regions in the Netherlands since September 2002, will soon be introduced nationwide. The crime line is a joint initiative between the Dutch Government and the Federation of Insurers under the National Platform for Crime Control. Each phone call is assessed by trained personnel who report to investigating experts, who in turn examine the information in more detail. Roughly one in five phone crime reports appear to be useful and result in the police and/or other authorities being notified. (*Government Press Release*, Oct. 15, 2003, <http://www.regering.nl>.)
(Karel Wennink, 7-9864)

RUSSIAN FEDERATION – Halloween Celebration Outlawed

The Ministry of Education of the Russian Federation issued an official letter signed by the First Deputy Minister and addressed to the heads of the district departments of education, according to which “Halloween celebrations cannot be allowed in any possible form.” The document cites experts of the Education Ministry Advisory Board, researchers of the State Research Institute for Family and Upbringing, and the Institute of Teaching Innovations at the Russian Education Academy as well as the opinions of parents and teachers who are concerned about negative consequences of Halloween for the teaching and educational process and its participants. The Ministry’s explanation of the ban is based on the fact that Halloween activities contain religious elements, which contradict the secular character of education in State-run educational institutions and produce a destructive effect upon the psychological, moral, and spiritual health of students. The letter encourages heads of educational institutions to create new forms of holiday celebrations that could be celebrated jointly by students, teachers, and parents “according to basic values of the Russian culture.” (*RIA Novosti* [Russian government news service], Oct. 27, 2003, at <http://www.grani.ru/news>.) (Peter Roudik, 7-9861)

RUSSIAN FEDERATION – New Citizenship Rules

Amendments to the Citizenship Act were signed into law by President Vladimir Putin of Russia. They simplify the acquisition of Russian citizenship for all citizens of the former Soviet Union, regardless of their place of abode. According to the amendment, citizens of the former Soviet Union who were born in Russia will become Russian citizens under a simplified procedure without observation of obligatory conditions regarding term of residence. Other former Soviet citizens will be able to receive Russian citizenship without having to fulfill the conditions of residence in Russia for a certain period, reporting of one’s source of income, and command of the Russian language if they are already registered in Russia and confirm their desire to obtain Russian citizenship before January 1, 2006. Apart from that, the significantly simplified procedure can be used by World War II veterans, persons who have lived in Russia no less than 3 years, those married to a Russian citizen, or those who are dependent on their children who are Russian citizens. According to the amendments, Russian citizenship may also be granted to military servicemen who have served at least 3 years in the Russian Armed Forces. A supplemental provision provides for accepting foreign citizens for military service on a contract basis in the Russian Federation. (*Rossiiskaia Gazeta* [Russian government-owned daily], Oct. 20, 2003, at <http://www.rg.ru>.) (Peter Roudik, 7-9861)

SLOVAKIA – Office of Human Rights

The Law of December 15, 1993, on the Office of Human Rights (OHR), which established that office, was amended by the Law of April 9, 2003 (Nos. 308 and 136, *Collection of Laws*). As established in 1993, the functions of the Office consisted of carrying out research and publishing its findings. The 2003 amendment greatly expands the OHR’s activities. It now monitors and evaluates the observance of human rights in the Republic of Slovakia and by January 31 of every year it is to publish an annual report on the observance of human rights in the past year. The Office is headed by a Board of Administration and an Executive Director. The Board has nine members appointed for three-year terms. The following dignitaries appoint one member each from persons of authority in the field of human rights: the President of the Republic, the Chairman of Parliament, the Ombudsman, the deans of the four law schools, the Prime Minister and the Minister of Labor and Social Affairs. The Board appoints the Executive Director for a three-year term. He must be at least 35 years of age and have a university education and experience in human rights. Both the Board members and the Executive Director may be reappointed for another

consecutive three-year term.
(George E. Glos, 7-9849)

UKRAINE – Telecommunications Monitoring

In order to expand measures used by law enforcement agencies for receiving information from communications channels, the Security Service of Ukraine (former KGB) drafted and proposed the Law on Telecommunications Monitoring, which was adopted by the Ukrainian legislature on October 17, 2003. An integrated monitoring system will be created and installed on the premises of telecom operators, at their expense. The system will provide the monitoring security agency with the opportunity to access any communications session of a subscriber who uses services of a telecommunications network. That includes mobile communications systems, both trunk and fixed telephony, and systems of data transfer. The Law requires that the system be able to identify and copy the content of communications sessions conducted through digital communications systems operating in Ukraine linked to the public telephone network in real time, without any possibility of the subject of the monitoring to discover that his or her conversations are being documented by law enforcement agencies. The Law provides for the use of the results of this monitoring as evidence in criminal legal proceedings. The procedure for carrying out, storing, and using the reports of telecommunications monitoring is to be defined by the Government of Ukraine. The Law does not specify measures to ensure control over the use of the new system. (*BBC Monitoring*, Oct. 17, 2003, at <http://site.securities.com>.)
(Peter Roudik, 7-9861)

NEAR EAST

ARMENIA – Alternative Military Service Introduced

The Armenian Parliament passed amendments to the Law on Military Service that provide for alternative military service for those who conscientiously object to serving in the military. According to the newly adopted Law, in order to be exempt from active military duty, objectors must prove to the military draft commissions in their places of abode that their religious views prevent them from serving in the armed forces. Those whose right to alternative service is recognized will be required to spend three years in military units performing non-combat-related tasks, twice as long as regular military service. Even though during their period of duty they will have the same rights and obligations as military conscripts, those who have chosen the alternative military service will be barred for life from working in the police or the judiciary. (*Radio Free Europe/Radio Liberty, Transcaucasus and Central Asia Newslines*, Oct. 10, 2003.)
(Peter Roudik, 7-9861)

ISRAEL – Ministry of Religious Affairs Abolished

The Government of Israel approved the abolition of the Ministry of Religious Affairs and the transfer of responsibilities involving religious courts to the Ministry of Justice. Religious court (including Rabbinical (Jewish), *Sharia* (Moslem) and Christian) jurisdiction is limited to matters of marriage and divorce of members of their respective communities. The Government decision fulfils its obligation under the coalition agreement. Under the plan approved by the Cabinet, the Religious Affairs Ministry is to cease to exist by December 31, 2003, and an allocation for it is not to appear in next year's budget. The Ministry's various departments will be divided among existing ministries. For example, the department in charge of holy places will be transferred to the Tourism Ministry.

The Minister of Justice, Yosef Lapid, who is the head of the Shinui secular political party, welcomed the decision and stated: “The government’s decision will have a great impact on the life of the public, allowing decades of injustices to be corrected. The secular revolution took an important step forward and I am proud of this achievement, but I promise not to exploit my new authority and to show full respect to the rabbinical courts.” The decision met with strong opposition from both chief rabbis, however, who insisted on a linkage between the rabbinical courts and the rabbinate. Both of the rabbis belong to the orthodox branch of Judaism. The Conservative and Reform movements did not share this view. Rather, they welcomed the Cabinet decision, which is expected to minimize the current monopoly of Orthodox Judaism over matrimonial affairs in Israel. (G. Hoffman & H. Keinor, “Rabbinical Court Transfer Sparks Coalition Crisis,” *The Jerusalem Post*, at <http://www.jpost.com/>, Oct. 9, 2003; Y. Lis, M. Mualem & N. Shragai, “The Ministry of Religious Affairs Will Be Dismantled: Rabbinical Courts to the Ministry of Justice,” *Haaretz*, at <http://haaretz.co.il/>, Oct. 9, 2003.) (Ruth Levush, 7-9847)

ISRAEL – New Security Procedures in the Knesset

New security procedures have been adopted for Israel’s Knesset (Parliament) following information that terrorist organizations are planning to commit suicide attacks inside it. Every person who enters the Knesset area will undergo thorough physical examination and all belongings will be checked via metal detectors located at entrances to the building. The only persons exempted from the daily examination are ministers, Knesset members, and permanent Knesset employees. To facilitate the lengthy process, separate entrances to the building have been established: one for those who are exempt and one for all other persons. The Knesset Chairman has also included the parliamentary assistants of Knesset members in the group of those who must go through the security examination.

The Knesset police have established a special unit for protection of Members. In addition, the Knesset has recently improved the surveillance equipment around the building, including sophisticated electronic devices and special cameras operating in the area. (A. Bandar, “Knesset Under Alert,” *Maariv* [Newspaper] *Online*, at <http://www.maariv.co.il/>, Oct. 20, 2003.) (Ruth Levush, 7-9847)

SOUTH PACIFIC

AUSTRALIA – Anti-Defamation Law Clashes with Freedom of Speech

A judge of the State of Victoria’s Civil and Administrative Tribunal, hearing the first case brought under Victoria’s Racial and Religious Tolerance Act 2001, said he might have to refer the case to the State’s Supreme Court to determine if the Act might be in conflict with the federal High Court’s constitutional decisions. He was also concerned that the federal issues raised by the defense might be outside his jurisdiction. The Islamic Council of Victoria had complained that a seminar by the Christian group, Catch the Fire, had incited scorn, fear, and hatred of Muslims. The Christian group’s barrister argued that Victoria’s Act was invalid on constitutional grounds, as it conflicted with the right to freedom of speech. He also argued that the Act dealt with inciting hatred, contempt, and revulsion, whereas his group urged Christians to love Muslims and pray for them. (*The Age*, Oct. 17, 2003, at <http://www.theage.com.au/>.) (Donald R. DeGlopper, 7-9831)

AUSTRALIA – Improving Corporate Accountability

On October 8, 2003, Australia's Treasurer, Peter Costello, released a draft of amendments to the Corporations Act intended to make boards of directors and managers more accountable to stockholders and to strengthen the watchdog Australian Securities and Investments Commission. The measures, designed to improve auditing practice, limit exorbitant pay for executives, and avert corporate collapses, were welcomed by the Australian Shareholders' Association, which said that they did not go far enough.

Major provisions of the Corporate Law Economic Reform Program (Audit Reform & Corporate Disclosure) Bill include: giving legal force to auditing standards; expansion of the monitoring function of the Financial Reporting Council; restrictions on financial relationships between auditors and their clients; increased penalties for failure to disclose financial information; and a requirement that shareholders approve the termination payments of company directors. (Peter Costello, Treasurer of the Commonwealth of Australia, *Government Releases Exposure Draft Legislation on Audit Reform & Corporate Disclosure*, Press Release, Oct. 8, 2003, at <http://www.treasurer.gov.au/tsr/content/pressreleases/2003/087.asp?pf=1>; *Sydney Morning Herald*, Oct. 9, 2003, at <http://www.smh.com.au/>.)
(Donald R. DeGlopper, 7-9831)

NEW ZEALAND – Appeal to the Privy Council Abolished

On October 14, 2003, New Zealand's Parliament passed the Supreme Court Bill, which abolished appeal to the Judicial Committee of the Privy Council (in London) and provided for the establishment of a Supreme Court. Appeals to the Privy Council will end on December 31, 2003, and the new Supreme Court will begin hearing appeals in July 2004. Speaking in Parliament before the final vote, Attorney-General Margaret Wilson said, "We must throw off, once and for all, the fetters of our colonial past." Opponents of the bill had argued that cutting ties to London was a constitutional change and so required approval of either three-quarters of the Members of Parliament or of a majority of voters in a referendum, but the Government held that a change in the court system could be effected by a simple majority in Parliament. The bill passed by a 63 to 53 vote in the 120-member Parliament. ("Appeals to London Abolished," *The New Zealand Herald*, Oct. 15, 2003, at <http://www.nzherald.co.nz/>.)
(Donald R. DeGlopper, 7-9831)

INTERNATIONAL LAW AND ORGANIZATIONS

ARGENTINA/CUBA – Agreements Concluded

The Argentine Chancellor Rafael Bielsa recently met with his Cuban counterpart, Felipe Perez Roque, in Havana, where they signed a series of agreements to lower customs tariffs, support the association of Cuba with MERCOSUR (the South American trade bloc composed of Argentina, Brazil, Uruguay, and Paraguay), engage in joint technical and scientific endeavors, and reduce Cuban external debt with Argentina through the former country's sending doctors and medical specialists to treat Argentina's poor. The concluding of these agreements marks a reconciliation of political differences between the two countries. ("Argentina and Cuba Become Partners," *BBC Mundo.com*, Oct. 14, 2003, via http://news.bbc.co.uk/hi/spanish/latin_america/newsid_3189000/3189260.stm.)
(Sandra Sawicki, 7-9819)

BRAZIL/UKRAINE – Space Cooperation Agreement

The presidents of Brazil and Ukraine signed an agreement of cooperation on October 21, 2003, to launch a Ziklon-4 Ukrainian rocket from Brazil by 2007. The pact, which was ratified recently by the Brazilian Congress, was signed by Luiz Inacio Lula da Silva and Leonid Kutchma. This is the first

agreement concluded by Brazil that will permit another nation to construct and launch rockets from the Alcantara Space Center in the northeastern state of Maranhao. Due to the Space Center's location close to the equator, rockets launched from it can carry more weight and save fuel. To set the cooperative efforts in motion, each country will invest about \$50 million to construct a launching platform and other essential infrastructure. Ukraine will pay for the construction of the rocket, which is planned to transport weather observation and communications satellites into space. ("Brazil and Ukraine Sign an Agreement for Space Cooperation," *CNNenEspanol*, Oct. 21, 2003, via <http://www.cnnenespanol.com/>.) (Sandra Sawicki, 7-9819)

INDIA/MAURITIUS – Tax Exemption for Mauritian Firms

In a judgment that may encourage foreign direct investment in India, on October 7, 2003, the Supreme Court upheld the Central Board of Direct Taxes circular issued on April 13, 2000, granting income tax exemption on capital gains on investment made in the country by Mauritian-based companies. The circular was in consonance with the Indo-Mauritius Double Taxation Avoidance Treaty of 1982, which clarified that foreign institutional investors and other investment funds incorporated in Mauritius were "liable to tax" under the Mauritian tax laws and hence considered as residents of Mauritius under the treaty.

Later the circular was quashed by the high court on the ground that the assessing powers of the income tax officers, being quasi-judicial in nature, "cannot be taken away by such a circular." An appeal by the Central Government and a Mauritian firm, Global Business Institute Limited, challenged the high court order in the Supreme Court. The latter observed that the high court had erred in quashing the circular because the assessing authorities can still determine whether the person assessed is also a resident of India under the Income Tax Act. (*The Times of India*, Oct. 7, 2003, <http://timesofindia.indiatimes.com/cms.dll/html/uncomp/articleshow?msid=220039>.) (Krishan Nehra, 7-7103)

INDIA/PHILIPPINES – Extradition Treaty Planned

India and the Philippines, which share common concerns about terrorism within and outside their territories, have agreed to exchange experience, information, and intelligence to fight it and have decided to sign an extradition treaty to deal with it. The issue was separately discussed by the heads of the two Governments during the recent two-day 9th ASEAN Summit, held in Bali. The Filipino Justice Minister is expected to visit India soon to work out details of the extradition treaty. (*The Hindu*, Oct. 7, 2003, at <http://www.hinduonnet.com/thehindu/holnus/01072223.htm>.) (Krishan Nehra, 7-7103)

VIETNAM/UNITED STATES – Bilateral Air Agreement

On October 9, 2003, the United States and Vietnam initialed a landmark agreement to allow direct passenger and cargo flights between the two countries, in the form of a five-year pact that must be ratified by their governments. The U.S.-Vietnam bilateral trade agreement that entered into force in December 2001, allowing for phased opening up of Vietnam's markets to U.S. investors, did not cover aviation issues.

The new agreement falls short of an "open skies" accord. During the first two years, only two

passenger airlines will be able to fly to Vietnam; a third carrier will be given that right in the third year of the plan. However, there are no limits on the number of U.S. carriers that fly to Vietnam under code share arrangements with non-American airlines or on the number of cargo carriers. In a major concession to the Vietnamese side, the United States agreed that its airlines will not pick up passengers from hubs such as Japan, Taiwan, France, and Hong Kong—which are Vietnam’s key markets—en route to Vietnam. The authorities apparently feared that allowing unhindered access to the country via its key markets would undercut the national flag carrier, Vietnam Airlines. Cargo carriers also may not fly directly from Vietnam to the above-mentioned four hubs or to South Korea. The agreement places restrictions not only on the number of passenger airlines but also on the destination cities and the frequency of flights. (“US, Vietnam Initial Bilateral Air Agreement,” Agence France Press, Oct. 9, 2003, via LEXIS/NEXIS.) (Wendy Zeldin, 7-9832)

ASEAN

Bali Concord II, Free Trade Negotiations

The leaders of the ten ASEAN (Association of Southeast Asian Nations) Member States (Brunei, Burma, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, and Vietnam) signed a declaration on October 7, 2003, in Bali, stating that they will form an ASEAN Community. The Community will have three aspects, called pillars: political and security cooperation, economic cooperation, and socio-cultural cooperation. The overall goal is to ensure peace, stability, and prosperity in the region. The declaration outlines the creation of an ASEAN Security Community to promote regional solidarity and cooperation while maintaining the sovereignty of the member nations; an ASEAN Economic Community to create a single market; and an ASEAN Socio-Cultural Community to foster cooperation in social development, including advancing education, working jointly on such public health issues as HIV/AIDS and SARS, and promoting interaction among scholars, writers, and artists of all kinds in the region. (Text of Declaration in “ASEAN Leaders Issue Bali Concord II Declaration,” ASEAN Secretariat (Jakarta), Oct. 7, 2003, via FBIS.)

In addition, on October 8, 2003, ASEAN’s members signed agreements to launch framework negotiations for a free trade area with Japan and India. A similar process begun last year with China will be accelerated, and South Korea has also expressed interest. Indonesia’s Foreign Minister, Hassan Wirajuda, expressed the view that if these agreements come into force in ten years as is now expected, there will be a free trade zone covering two billion people in East Asia. (“ASEAN Leaders Sign Cooperation Agreements,” *VOA News*, Oct. 8, 2003, online version, at <http://www.voanews.com/>.) (Constance A. Johnson, 7-9829)

Treaty of Amity and Cooperation with China

The People’s Republic of China acceded to the Treaty of Amity and Cooperation of the ten-member Association of Southeast Asian Nations (ASEAN) on October 8, 2003. On the same day, China also signed a Joint Declaration on Strategic Partnership for Peace and Prosperity with ASEAN, making it the latter’s first strategic partner. The Declaration reviews the two sides’ collaboration since 1997 and outlines possible directions of further development. (“China Signs Agreement To Deepen Cooperation with ASEAN,” *China Daily*, Internet version, Oct. 9, 2003, via FBIS.) (Wendy Zeldin, 7-9832)

EUROPEAN UNION

Compensation to Air Passengers

On October 15, 2003, the Conciliation Committee, which is composed of equal numbers of Council of the European Union and European Parliament members, agreed on a proposed Regulation that establishes assistance and compensation rights for those passengers who are stranded in airports due to delayed or cancelled flights. In particular, passengers have the right to enjoy free meals, use of a telephone, and hotel accommodations in case of prolonged delays. If a flight is delayed for more than five hours and defeats the original purpose of the air travel, passengers must be reimbursed. Passengers may exercise these rights provided they have a confirmed reservation and check in according to airline procedures. The Committee also agreed on the definition of cancelled flights as initially proposed by the Parliament, that is, “non operation of a flight which was previously planned and on which at least one place was reserved.” The European Commission expressed its commitment to initiate legislation at a later stage to expand these rights to passengers who use other means of transportation. ([http://europa.eu.int/.](http://europa.eu.int/)) (Theresa Papademetriou, 7-9857)

Competitiveness of the Pharmaceutical Industry

On September 22, 2003, the Council of the European Union adopted conclusions on proposed measures to reinforce the competitiveness of the EU pharmaceutical industry. The conclusions urge the Member States to participate actively, especially by reporting on legislative and other initiatives that could potentially affect the pharmaceutical field. The conclusions also called on the Commission to prepare a Community-wide assessment of pricing and reimbursement systems in the Member States and to report back to the Council on the status of the industry on a regular basis. ([http://europa.eu.int/.](http://europa.eu.int/)) (Theresa Papademetriou, 7-9857)

Death Penalty

On October 10, 2003, which has been designated “World Day Against the Death Penalty,” the EU reiterated its firm stand against the imposition of the death penalty under any circumstances. The EU’s commitment to eradication of the death penalty is reflected in its support of the work of the European Initiative for Democracy and Human Rights and its 4.9 million *euro* allocation of funds in 2002 to measures that increase public awareness of this issue. ([http://europa.eu.int/.](http://europa.eu.int/)) (Theresa Papademetriou, 7-9857)

Electromagnetic Fields and Protection of Workers

The Council of the European Union approved a Directive on the protection of workers who are exposed to the dangers of electromagnetic fields and waves. The Directive is based on scientific data indicating that exposure to electromagnetic fields can be detrimental to the health of workers and applies to all areas of activity involving such exposure. Under the Directive’s provisions, employers are obliged to assess whether radio or TV antennae, radar installations, electricity generators, and other electromagnetic fields put their employees at risk by directly or indirectly adversely affecting their health. The Directive establishes maximum allowed levels of exposure and also provides for preventive measures to be taken by the employers. ([http://europa.eu.int/.](http://europa.eu.int/)) (Theresa Papademetriou, 7-9857)

European Aviation Safety Agency

On September 28, 2003, the European Aviation Safety Agency began operations. The Agency enjoys legal personality and provides assistance to the European Commission in the area of civil aviation.

It also issues certificates for aeronautical products and approves design and production bodies. (<http://europa.eu.int/>.)

(Theresa Papademetriou, 7-9857)

Monitoring Greenhouse Gas Emissions

On October 21, 2003, the European Parliament endorsed a decision proposed by the European Commission in February 2003 to monitor greenhouse gas emissions, as contained in the 1997 Kyoto Protocol. The vote was welcomed by the Environment Commissioner, who stated that such an action “shows the EU’s determination to implement all the provisions of the Protocol and to reduce greenhouse gas emissions.” Member States are required to meet the reporting requirements and establish national systems to ensure effective monitoring of the emissions. (<http://europa.eu.int/>.)

(Theresa Papademetriou, 7-9857)